

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DARROW BOGGIANO,
Plaintiff,

vs.

OFFICIALCITYSITES.ORG,
LENDERHOST, INC. and DOES 1-10,
Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR RECONSIDERATION

Case No. 2:05-CV-623 TS

On November 23, 2005, Defendant Lenderhost filed a Motion to Dismiss for Lack of Personal Jurisdiction, Improper Venue and Insufficient Service of Process. Plaintiff failed to respond to that Motion. On January 30, 2006, the Court granted Lenderhost's Motion pursuant to DUCivR 7-1(d). On February 8, 2006, Plaintiff filed a Motion for Reconsideration arguing that she had not received notice of the pending Motion to Dismiss and, if she had, she would have promptly submitted a Memorandum in Opposition. Attached to Plaintiff's Motion for Reconsideration is Plaintiff's Opposition to Defendant's Motion to Dismiss. Defendant Lenderhost has not responded to Plaintiff's Motion for Reconsideration. For the reasons discussed below, the Court will grant Plaintiff's Motion.

“Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.”¹ “Thus, a Motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law. . . . It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.”²

The Court granted Lenderhost’s Motion to Dismiss pursuant to DUCivR 7-1(d) as a result of Plaintiff’s failure to respond. The Court did not address the merits of the Motion. Here, Defendant Lenderhost has failed to respond to Plaintiff’s Motion for Reconsideration. Under DUCivR 7-1(d) the Court may grant Plaintiff’s Motion on that ground alone. In the interests of resolving this case on the merits and as a result of Defendant Lenderhost’s failure to respond, the Court will grant Plaintiff’s Motion for Reconsideration. Defendant Lenderhost may file a discretionary reply brief to its Motion to Dismiss within seven (7) days of this Order. At that point, the Court will determine whether a hearing on Defendant Lenderhost’s Motion to Dismiss is necessary. Otherwise, the Court will rule from the materials submitted by the parties.

It is therefore

ORDERED that Plaintiff’s Motion for Reconsideration (Docket No. 21) is GRANTED.

It is further

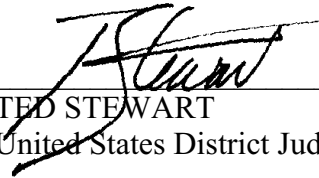
ORDERED that Defendant Lenderhost may file a discretionary reply brief to its Motion to Dismiss within seven (7) days of this Order.

¹*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

²*Id.*

DATED April 5, 2006.

BY THE COURT:



TED STEWART
United States District Judge